IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.605 of 2007

Parimaladevi @ Sharmiladevi .. Petitioner

Vs

1. The Secretary to
the Government of Tamil Nadu
Prohibition and Excise Department
Fort St.George, Chennai-600 009.

2. The District Magistrate
and District Collector
Nagapattinam District
Nagapattinam. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.N.Duraisami for Mr. T. P. Senthilkumar

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The above writ petition is filed by the wife of the detenu, Muthu, son of Dekzhinamoorthy, aged 37 years, for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 8.4.2007 made in detention order C.O.C.No.09 of 2007 passed by the second respondent herein, to quash the same and to direct the respondents to produce the body of the detenu detained in the Central Prison, Thiruchirappalli and to set him at liberty.

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2. The detenu was detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short "the Act") in pursuance of the impugned order of detention branding him as a "Bootlegger".

3.1. The order of detention dated 8.4.2007 was passed on the basis of ground case in Crime No.450 of 2007 for alleged commission of offences under Sections 4(1)(aa) read with 4(1-A) of the Tamil Nadu Prohibition Act and Rules 5 and 6 of the TNRS Rules. The allegation against the detenu was that on 27.3.2007 when the Inspector of Police, Enforcement Wing, Nagapattinam along with his police party went on a prohibition raid, at Rettaimathagai in Thevur-Kakkazhani Road, the Inspector of Police and his party found the detenu was riding a motor cycle and another person was sitting in the rear of the vehicle, stopped the vehicle and found that the person sitting in the rear of the vehicle was in possession of two 35 litres capacity black colour plastic cans with 35 litres of spirit each totalling seventy litres. The detenu and his associate were arrested in the presence of witnesses, confession statement was recorded, contrabands seized, and a case was registered. The detenu was produced before the Judicial Magistrate No.1, Nagapattinam and was remanded to judicial custody. The samples of arrack seized were sent for chemical analysis and the report of the Assistant Director, Regional Forensic Science Laboratory, Thanjavur reveals that the samples contain 6.0 mg% w/v/ of Atropine per 100 ml. The Assistant Medical Officer opined that consumption of arrack mixed with 6.0 mg% w/v of Atropine in 100 ml. would affect the lungs and heart and is likely to endanger life, even if intensive treatment is given to patient.

3.2. Apart from the above, the detaining authority also took note of the two adverse cases pending against the detenu in Crime Nos.71 and 568/2004 for the offences punishable under Sections 279, 337, 332, 506(ii) of the Indian Penal Code and Sections 4(1-A), 4(1)(aaa) of the Tamil Nadu Prohibition Act and Rules 5 and 6 of TNRS Rules. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

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5. Concededly, there are two accused, viz., the detenu and Ramesh. The requisition for remand was made on 27.3.2007, but the order of remand was passed on 28.3.2007. The remand order does not disclose which accused was produced, the detenu or his associate Ramesh, nor when the accused was produced on 27.3.2007 or 28.3.2007. The remand order also does not contain the crime number, it reads as follows:

"REMAND ORDER

Accused produced. No complaints Remanded till 11.4.2007.

This order passed passed by me on 28.3.2007."

Mr.N.R.Elango, learned Additional Public Prosecutor is not in a position to sustain the above infirmity, which amounts to non-application of mind. We are of the considered opinion, that the above infirmity vitiates the order of detention.

For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 8.4.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to
   the Government of Tamil Nadu
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

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2. The District Magistrate
   and District Collector
   Nagapattinam District
   Nagapattinam.

3. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

4. The Superintendent of Central Prison,
   Trichirappalli.

5. The Public Prosecutor,
   High Court, Madras.

+ 1 cc to Mr. T. P. Senthil Kumar, Advocate SR No. 53916

BVR(CO)
SR/10.9.2007

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